The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502.

The Global Heritage Alliance, 5335 Wisconsin Ave., NW Ste 440, Washington, DC 20015

Comments on UNESCO's Draft Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property

November 11, 2022

The Committee for Cultural Policy, Inc.[1] and Global Heritage Alliance[2] appreciate the opportunity to comment on UNESCO's draft *Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property*.[3] The **General Comments** below outline policy concerns regarding the undermining of cultural rights of minorities, UNESCO's lack of consultation with key stakeholders, and UNESCO's apparent reliance on bad data in formulating the policies in the Model Provisions. Of particular concern is the failure of the Model Provisions to acknowledge the United States' reservations to the 1970 Convention, which the Model Provisions fail to address. This is followed by a section with **Specific Comments** on individual Articles in the Model Provisions.

EXECUTIVE SUMMARY

- UNESCO's 2022 proposed Model Provisions are seriously flawed and should be redrafted to reflect the public's interest in a lawful global circulation of art and artifacts and to address the legitimate concerns of the lawful art trade, museums, educational institutions, and private owners set forth below:
- The Model Provisions call for extra-territorial enforcement of foreign nationalizing laws and return of objects to countries where they were created thousands of years before, without requiring actual evidence that they were illicitly acquired.

[1] The Committee for Cultural Policy, Inc (CCP) is an educational and policy research organization that supports the preservation and public appreciation of the art of ancient and indigenous cultures. CCP supports policies that enable the lawful collection, exhibition, and global circulation of artworks and preserve artifacts and archaeological sites through funding for site protection. CCP deplores the destruction of archaeological sites and monuments and encourage policies enabling safe harbor in international museums for at-risk objects from countries in crisis. CCP defends uncensored academic research and urges funding for museum development around the world. CCP believes that communication through artistic exchange is beneficial for international understanding and that the protection and preservation of art is the responsibility and duty of all humankind. The Committee for Cultural Policy, POB 4881, Santa Fe, NM 87502. www.culturalpropertynews.org, info@culturalpropertynews.org.

[2] Global Heritage Alliance, Inc (GHA) advocates for policies that will restore balance in U.S. government policy in order to foster appreciation of ancient and indigenous cultures and the preservation of their artifacts for the education and enjoyment of the American public. GHA supports policies that facilitate lawful trade in cultural artifacts and promotes responsible collecting and stewardship of archaeological and ethnological objects. The Global Heritage Alliance, 5335 Wisconsin Ave., NW Ste 440, Washington, DC 20015. http://global-heritage.org/

[3] Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property, Draft, revised in accordance with the comments made by the Consultative Body on 11 July 2022, https://44670d.a2cdn1.secureserver.net/wp-content/uploads/2022/11/proposed-Draft-Model-Provisions.pdf, last visited November 6, 2022.

- The Model Provisions endorse state ownership of all cultural objects, including private and religious property, damaging fundamental human, cultural, and religious rights of minorities.
- The Model Provisions mandate government licensing and supervision of all businesses and persons trading in cultural property, contrary to established regulatory regimes in many State Parties.
- The Model Provisions establish unattainable provenance requirements, since few countries ever established export permitting systems. When permits existed, they were not retained by State Parties to provide a record of lawful exports or by exporters because there was no obligation to do so at the time. After decades or even centuries in circulation, provenance records do not exist for the majority of ethnographic and ancient objects.
- The Model Provisions are so broad that they will apply to objects regardless of their importance to national identity, history, or science.
- The Model Provisions would inappropriately apply severe restrictions to trade in objects duplicated in the millions and limit the circulation of common ethnological objects as well as items mass produced for commerce.
- The proposed changes appear geared to expanding the reach of foreign state governments' control over European, UK, Japanese, Singaporean, and US ownership of art and cultural property, whether it belongs to private citizens, museums or is circulating in the art trade, not to fulfilling the express statement in the preamble of the 1970 UNESCO Convention, that "the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations."
- If the Model Provisions are implemented into the national laws of countries where much art now circulates freely, as it does in the EU, the UK and in the United States, most of the legal international trade in ancient and ethnographic art would end.

GENERAL COMMENTS

The Model Provisions would damage human, cultural, and religious rights of minorities.

The Model Provisions clearly endorse state ownership of all cultural objects, including private and religious property – they would, for example, grant recognition of Middle Eastern and North African nations' seizures of Jewish patrimony, Turkey and Azerbaijan's control over Greek Orthodox and Armenian Christian heritage, and China's claims for absolute control of all minority Tibetan and Uyghur heritage. The human and religious rights of religious and ethnic minorities would be impacted by policies in the Model Provisions exclusively restricting ownership of cultural heritage to governments that do not represent minority communities' best interests, in many cases abuse minority communities, or have forced them from their country of origin without rights to their possessions and their heritage.

Article 17 of the U.N Declaration of Human Rights states that no individual or community should be arbitrarily deprived of their property. Therefore, the Model Provisions should make clear that UNESCO does not condone the taking of individual or community property by a State Party in violation of Article 17 of the U.N Declaration of Human Rights.

While there is no internationally recognized "human right to cultural property" or "human right to cultural heritage," international law does recognize a "human right to culture." Article 22 of the Universal Declaration of Human Rights states that: "Everyone, as a member of society... is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality." (Universal Declaration of Human Rights, art. 22 (1948).

The UNESCO Declaration of the Principles of International Cultural Co-operation, (1966) echoes the same sentiment to protect "mankind's common heritage:

1. Each culture has a dignity and value, which must be respected and preserved.
2. Every people has the right and the duty to develop its culture.
3. In their rich variety and diversity, and in the reciprocal influences they exert on one another, all cultures form part of the common heritage belonging to all mankind. (Declaration of Principles of International Cultural Co-operation, art. 1, Nov. 4, 1966)

Definitions of the "human right to culture" range from the right and ability to interact with culture, (Breten Breytenbach, *Cultural interaction*, UNESCO Definition of Cultural Rights at 42) to broader definitions that define cultural rights to encompass other rights listed under the Universal Declaration of Human Rights, including the right to self-determination, the right to education, and of course, basic property rights. (Working Paper prepared by the Secretariat, in *Cultural Rights as Human Rights*, UNESCO at 10 (1970)).

When examining the "property" component of "cultural property," the Universal Declaration on Human Rights states that, "everyone has the right to own property alone as well as in association with others [and that] no one shall be arbitrarily deprived of his property."(Universal Declaration of Human Rights, art. 17).

The failure to properly balance the interest of local communities or certain ethnic groups is even clearer when considering that *access* to one's cultural heritage is often considered one of the most important attributes of a human right to culture:

"The right of access to and enjoyment of all forms of cultural heritage is guaranteed by international human rights law, including . . . in particular, from the right to take part in cultural life, the right of members of minorities to enjoy their own culture and the right of indigenous people to self-determination and to maintain, control, protect and develop cultural heritage." (Report of the Special Rapporteur in the field of cultural rights, A/HRC/31/59 at 12.)[4]

[4] *See also* Kimberly L. Alderman, *The Human Right to Cultural* Property, 20 Mich. St. L. Rev. 69, 73 (2011) ("individuals "have the human right to access cultural materials and sites, and that this access is necessary for meaningful participation in cultural life.")

The Model Provisions set forth a simplistic, narrow specific to remedy heritage ills: repatriation

The Model Provisions appear to endorse blanket repatriation on demand, a shortsighted approach completely in contradiction to the goals of cooperative action in the 1970 Convention. Today, talk of repatriation too often descends to polemics; global museums are automatically deemed 'colonialist,' and artifacts are called 'stolen' and 'looted.' Restitution and repatriation of objects is particularly focused on objects in Western museums acquired by European nations from former colonies and is linked to wider agendas around decolonising museums. This kind of name-calling leaves little room for productive discussion.

When an artwork or artifact is stolen in the ordinary sense of the word, there is no question, legally or ethically, about the return. That is not the issue in most repatriations. Policies on repatriation to any country should include balancing considerations of adequate documentation of objects' provenance, how to give notice to potential claimants, how to resolve conflicting claims, and especially of the fact that there is often no legal basis for categorizing objects as 'illegal' or 'looted' in the first place.

Policies on repatriation to a country that is abusing its heritage or nationalizing the property of religious minorities require even more caution. Should religious items be returned to governments of countries that drove out religious minorities without their possessions? Should returns be undertaken when governments are actively demolishing monuments of minority cultures, despite having adopted laws guaranteeing their preservation, as in the case of destroyed Tibetan lamaseries and ancient Uyghur mosques and cemeteries in China?

Should there be returns today to unstable and irresponsible governments such as those in Afghanistan, Syria, Libya, and Yemen, where artifacts are still at risk of destruction in war and governments more often place heritage at risk than protect it?

The majority of museums go further to honor claims by countries of origin than any law requires. For example, the "guidelines" on acquisition set forth by the Association of Art Museum Directors in 2008 and 2013 were explicitly subject to modification based upon circumstances but most US museums adopted rigid rules against accessioning any object without proof of legal export from its source country after 1970. Since few source countries ever issued official permits (and those that did, like Egypt up through 1983, have inadequate descriptions) the result has been to make hundreds of thousands of privately-owned objects into "orphans" that could not find a home in museums, even as gifts. The lack of documentation today has become an insurmountable barrier for objects legally imported into the US decades before.

Repatriation should be based upon cooperative engagement and positive partnerships between indigenous communities, museums holding artifacts, and national governments. Any policy must also ensure that returned objects will have a secure future and that records be kept of any change of ownership or custody.

The ultimate goals of modification of the 1970 Convention should be to ensure documentation of entire collections, protocols and cooperative programs for research, sharing archival materials

and contextual information of transferred objects, and very generous loan policies on both sides to ensure that public access and scholarship continue unabated.

The Model Provisions demonstrate UNESCO's failure to consult with key stakeholders

UNESCO's lack of communication with key stakeholders before issuing the Model Provisions is alarming. A few hours of group "consultations" over the period of a year hardly amounts to a significant consultation with primary stakeholders. The UNESCO committee of 'experts' that created the proposed Model Provisions has no representation from important art collecting countries, nor anyone from collecting museums, nor anyone from the art market. This has had the unfortunate result of keeping the key stakeholders in the art trade, academe, and museums in the dark until the last minute. Regrettably, this lack of consultation has resulted in the Model Provisions reflecting a poor understanding of the problem they are intended to fix.

UNESCO continues to rely on misinformation and bad data to set policy

The UNESCO Model Provisions also suggest that modifying UNESCO 1970 and mandating the national implementation of restrictive domestic legislation is necessary because there is significant involvement of the art and ethnographic trade in illegal activities.

This is a "red herring," a false campaign promoted by extremist activists and repeated endlessly in the media.[5] In fact, there is no such evidence of the art trade's supporting looting, smuggling, terrorism, or money laundering. Serious studies such as the RAND Corporation's *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data***,**[6] have identified the sources responsible for promoting this misinformation in the press as being the same advocacy organizations that have consistently sought draconian regulation of the entire art trade.

The RAND Corporation report specifically identifies the Antiquities Coalition as responsible for spreading misinformation, citing: "Lehr, of the Antiquities Coalition, estimated that "[c]oming out of Syria, it is $2 billion" and "[w]ith Egypt, it is probably $3–10 billion, globally it has to be a much more significant number," [7] as assertions without factual basis.

---

[5] See Katherine Brennan and Kate Fitz Gibbon, "Bearing False Witness: The Media, ISIS, and Antiquities," Committee for Cultural Policy, Inc, Cultural Property News, December 1, 2017, https://44670d.a2cdn1.secureserver.net/pdf/Bearing-False-Witness-The-Media-ISIS-and-Antiquities.pdf

[6] Matthew Sargent, James V. Marrone, Alexandra T. Evans, Bilyana Lilly, Erik Nemeth, Stephen Dalzell, *Tracking and Disrupting the Illicit Antiquities Trade with Open Source Data***,** The RAND Corporation, 2020, at xiii and 10**,** https://www.rand.org/pubs/research_reports/RR2706.html. The RAND Corporation report states: "Technology used in the looted antiquities trade is mostly unsophisticated. Studies of other illegal goods suggest that the dark web would be a natural place to sell looted antiquities. However, our analysis of dark web platforms finds virtually no evidence of antiquities sales."

[7] "There has been little apparent effort in the field to ground these estimates in data or to understand the size of the market for antiquities. By way of comparison, the volume of all sales of Greek, Roman, and Egyptian antiquities by the major auction houses—Bonham's, Sotheby's and Christie's—in 2015 amounted to $41 million. Among these sales were artifacts whose provenance could be traced back as far as 1732, and only $326,000 of these sales were objects whose provenance could not be established before 2000. Moreover, 25 percent of all the items offered at auction were not sold either because there was no bidder or because the reserve price was not met. This reality that antiquities auctions represent a small market that is not always able to find buyers in well-advertised sales is at odds with the media's assumption that there is a booming unmet demand for these goods that is capable of supporting a billion-dollar black market." *Id*. at 11-12.

The RAND Corporation report indicates that the likely motivations for giving false numbers are both political and self-interested: "Linking cultural property crimes to these high-profile law enforcement issues offers a means to bring funding and political attention to what has traditionally been an underrecognized issue. However, the facts and figures used to support these arguments are often misinterpreted or overstated."[8]

RAND notes the prevalence of such statements in the media: "Unsubstantiated claims about the relationship among looting, weapons, drugs, and money laundering are common in both expert and popular publications, and inaccurate or exaggerated estimates of stolen items' value abound. The absence of a comprehensive effort to quantify the trade has also encouraged the spread of misleading or inaccurate statistics."[9]

The Model Provisions show that UNESCO has failed to learn from its errors in its *The Real Price of Art* campaign, in which it made misleading public statements about involvement of the art and antiquities trade in looting, money laundering or activities supporting terrorism. Unfortunately, UNESCO officials have failed to contradict these debunked numbers – supposedly in the billions of dollars – for the size of the illegal antiquities trade, and they continue to be stated in press reports and analyses, and even on UNESCO's website.[10]

As the distinguished attorney Yves-Bernard Debie wrote in 2021:

"The massive advertising campaign called The Real Price of Art that was launched worldwide last October [2020] was a deliberate lie that identified art market professionals and collectors as thieves, fences, and the accomplices of extremist terrorist groups through the use of deceptive and doctored photographs. Being unable to provide any proof at all that "the illicit trade in cultural goods, [which] is estimated to be worth nearly $10 billion each year," UNESCO chose instead to back up its contention with just forged images."[11]

---

[8] *Supra*, note 6, at 10.
[9] *Id.* at 10-12.
[10] The UNESCO Courier, "50 Years of the Fight Against Illicit Trafficking", October-December 2020, quotes Marcelo El Haibe, the federal police commissioner in charge of Cultural Heritage Protection, INTERPOL-Argentine Federal Police, "who estimates that the illegal trade is worth around $6.5 billion a year." https://unesdoc.unesco.org/ark:/48223/pf0000374570_eng, last visited November 6, 2022; UNESCO, Editorial, The Unesco Courier, issue 2020-4, https://en.unesco.org/courier/2020-4/editorial, stating, "The illicit flow of cultural goods is now believed to be the third-largest in terms of volume, after drugs and arms." UNESCO, "Returning the loot", press release, "While at the global amount of global sales of art and antiquities was recorded at US$ 50 .1 billion in 2020, experts agree that illicit trafficking of cultural property is one of the world's biggest illegal enterprises," https://www.unesco.org/en/articles/returning-loot, last visited November 6, 2022; UNESCO, Launch of the Global Campaign Against Illegal Trafficking in Tourism, 6 March 2014, Updated 21 April 2022, https://www.unesco.org/en/articles/launch-global-campaign-against-illegal-trafficking-tourism "We say that the illicit traffic of cultural property is estimated at $7 billion per year..." https://www.unesco.org/en/articles/launch-global-campaign-against-illegal-trafficking-tourism, last visited November 6, 2022. See also, "Time for UNESCO to stop using bogus figures about cultural property," Antiquities Dealers Association, November 23, 2020, https://theada.co.uk/time-for-unesco-to-stop-using-bogus-figures-about-cultural-property/, last visited November 6, 2022.
[11] Yves-Bernard Debie, UNESCO: "The 'Real Price of Art' Lie," Tribal Art Magazine, Number 99, Spring 2021, https://www.linkedin.com/pulse/unesco-real-price-lie-yves-bernard-debie/. As of this writing, DBB Paris, the developers of the original campaign, continues to show the full campaign with the false numbers and images from the Metropolitan Museum of Art in NY and other lawful collections on its website.

Policies to 'halt illicit trafficking' contravene U.S. Congress' reservations and interpretation of UNESCO 1970

When the United States Congress implemented the 1970 Convention with reservations to retain US independent judgement, Congress had serious concerns about applying blanket foreign laws nationalizing cultural property to U.S. citizens and public museums.[12] Instead, when Congress implemented the UNESCO Convention into U.S. law in 1983, through the Convention on Cultural Property Implementation Act (CPIA), it required foreign nations applying for U.S. assistance to show that their cultural heritage was actually under threat, that there was serious pillage, and that they were also taking self-help measures under the 1970 UNESCO Convention, not simply relying on the U.S. to be the world's policeman. Congress also insisted that U.S. import restrictions should be "consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes."[13]

In a law review article in 1982, Jeffrey L. Shanaberger described Congress' ratification of the Convention by providing its advice and consent on August 11, 1972, emphasizing the independent judgment and specific interpretations adopted by Congress. "The ratification was qualified, however, by six express understandings and a reservation... Clearly the most critical of the understandings was that the Convention was not to be self-executing or retroactive. As a result, the Convention was without force in the United States until Congress enacted the necessary implementing legislation."[14]

As stated in the Congressional Record:[15]

1. The United States reserved the right to determine whether or not to impose export controls over cultural property.
2. The United States understands the provisions of the Convention to be neither self-executing nor retroactive.
3. The United States understands Article 3 not to modify property interest in cultural property under the laws of the states parties.
4. The United States understands Article 7(a) to apply to institutions whose acquisition policy is subject to national control under existing domestic legislation and not to require the enactment of new legislation to establish national control over other institutions.

---

https://www.lbbonline.com/news/unesco-reveals-hidden-face-of-trafficking-in-cultural-property, last visited November 6, 2022.

[12] Other nations have also voiced concerns about the scope and definitions of the 1970 UNESCO Convention. The UK signed it only in 2002 and has issued guidance to its citizens on how to interpret its terms. Germany and the Netherlands each have their own perspectives or definitions of what constitutes cultural property under the 1970 Convention, for example, by limiting key provisions to objects that truly express the identity of a nation.

[13] 19 U.S.C. §§ 2601 *et seq.,* enacted as: "Title III of Public Law 97-446", on January 12, 1983.

[14] Jeffrey L. Shanaberger, *Struggling Against the Tide: United States Participation in Efforts to Curtail the Illicit Flow of Cultural Properties***,** 4 N.Y.J. INT'L & Comp. L.168 n. 62, 63 (1982).

[15] See Reservations UNESCO 1970 S. Res. 129, 92d Cong., 2d Sess., 118 CONG. Rec. 27,924-25 (1972).

5. The United States understands that Article 7(b) is without prejudice to other remedies, civil or penal, available under the laws of the states parties for the recovery of stolen cultural property to the rightful owner without payment or compensation. The United States is further prepared to take additional steps contemplated by Article 7(b)(ii) for the return of covered stolen cultural property without payment or compensation, except to the extent required by the Constitution of the United States, for those states parties that agree to do the same for the United States institutions.
6. The United States understands the words "as appropriate for each country" in Article 10(a) as permitting each state party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.
7. The United States understands Article 13(d) as applying to objects removed from the country of origin after the entry into force of this Convention, for the states concerned and, as stated by the Chairman of the Special Committee of Governmental Exports that prepared the text, and reported in paragraph 23 of the Report of that Committee, the means of recovery of cultural property under subparagraph (d) are the judicial actions referred to in subparagraph (c) of Article 13**,** and that such actions are controlled by the law of the requested State, the requesting State having to submit necessary proofs.

COMMENTS ON SPECIFIC MODEL PROVISIONS

The proposed Model Provisions issued by UNESCO in October, and set forth below, are clearly antithetical to the independent judgment so crucial to the United States' implementation of the original 1970 Convention and contradict the specific reservations made by Congress set forth above. We note the most problematic of the Model Provisions below:

Provision 5 - State of Origin
The "State of origin" does not account for situations where modern borders do not comport with ancient ones, or where the point of extraction, excavation, discovery or creation is unknown. Moreover, the place of creation of cultural property is not inextricably tied to a "national identity", an absurdity when items were made for trade or were actually the tools of trade, such as coinage.

Provision 7 – Inventory
The provision should also include that all recorded thefts and losses must be communicated immediately by the national or international authority to law enforcement and customs and to INTERPOL for inclusion in the database of stolen art. This is currently not the case which renders the INTERPOL database only a partially effective tool for all stakeholders.

The commentary states, "The establishment of a national inventory of cultural property is a cardinal obligation on the State in the establishment of their policy for the prevention and combat of illicit trafficking of cultural property. This obligation is laid down under Article 5 (b) of the 1970 UNESCO Convention."

However, many nation states do not meet this obligation and therefore UNESCO should introduce sanctions for those State Parties that do not fulfil their obligations in this field.

Any obligation for the State to collect information on and inventory private property, or to require private persons to inventory or make public their holdings must not infringe upon privacy rights enshrined under national and local law.

Provision 11 – Prevention of Irremediable injury to the cultural heritage of another State

This provision seems to depart from the idea that a country can exercise its independent judgment as to whether and to what extent to impose import restrictions on behalf of another country. As an example, the decision of the United States to retain an "independent judgment" requirement is embedded into the Convention on Cultural Property Implementation Act, 19 U.S.C. Section 2601 (CPIA).

Provision 12 – Return and restitution

This provision, founded on the principle of cooperation, concerns both cultural property transferred after the entry into force of the 1970 UNESCO Convention and those transferred before that entry into force. It requires states adjudicating claims to cultural property to apply foreign law even where it is inconsistent with the law of the jurisdiction.

Throughout the 20th century, international private law has differentiated between laws against export of objects without permission of the source country, which are not deemed enforceable internationally, and laws vesting national ownership in a State, which are. Such a rule is also contrary to the "independent judgment" with respect to import restrictions and safe harbor provisions embedded in the U.S. Convention on Cultural Property Implementation Act as well as U.S. principles of due process.

This provision, in line with the 1995 UNIDROIT Convention Article 4 (1), should recognize that 'the possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object"

Provision 14 - Good faith and obligation of due diligence

This provision ignores the presumption and protection of good faith and reverses the burden of proof, both of which are in conflict with the substantive law of a number of signatory States. This provision places an unfair and unrealistic burden on a possessor or acquirer of cultural property in several respects. The obligation of due diligence is incumbent on the acquirer who invokes his or her good faith. The good faith possessor or acquirer will no longer be able to rely on his or her good faith when the law of the State of origin or provenance excludes the possession or acquisition in good faith of the cultural property which is the subject of the action for restitution.

Due diligence searches and the burden of proof of export are contingent on the information available and the findings are often subject to the actions of the State Parties who historically were not concerned with the movement of cultural property and therefore did not control or monitor its export. Furthermore, State Parties did not always fulfill their own legal obligation to issue appropriate export licenses or to keep records of export licenses issued, and still to this day, do not report looted or stolen art to be recorded in the INTERPOL database.

It is not realistic or appropriate for private individuals, traders or museum personnel to find and search any existing registry for stolen art and all local art inventory registers as suggested in §2, as there are too many independent registers, often with varying degrees of access, and many involve a consultation fee. For effective due diligence, UNESCO and State authorities should commit to developing a single register for stolen cultural property such as the INTERPOL Database of Works of Stolen Art. Such a provision can only be effective to prevent illegal transactions if the registers are easily accessible, at either no cost or a negligible amount, and verification can be done efficiently.

The UNESCO commentary on this provision states, "*The provenance, as mentioned in §2 of the provision, includes a description of the full history of the item, including its ownership rights, from the time of its discovery (or creation), through which authenticity and ownership are determined."* This statement should be corrected because it does not take into account the reality of the limited available documentation related to cultural property.

The provision places no burden whatsoever on a State Party to make an evidence-based argument in claiming an object as the "State of origin or provenance" nor does it establish a time limit for making such claims. This would encourage "fishing expeditions" for objects of interest in the hopes that the possessor will not be able to show adequate "due diligence." The State Party must be obligated to provide legal evidence to support their claim.

Provision 15 – Regulation of the art market

Provision 15 should be deleted. It is beyond the initiative's scope of prevention and fighting against illicit trafficking to regulate law abiding establish traders. As study after study[16] fails to find any noteworthy evidence linking the art market to widescale trafficking, terrorism financing or money laundering, proof of the scope of such crimes must be collected before proposing new regulations that further oblige legitimate businesses and government authorities to adhere to more administrative burdens.

The Provision 15 requirement that art dealer, *"inform their clients of the import and export regulations in force in the States of provenance and acquisition"* should be deleted because determining the import and export regulation in the State of acquisition should be the responsibility of the buyer. Although traders should perform due diligence based on their risk analysis of the provenance, traders are not lawyers and cannot provide legal advice.

[16] See CINOA, "Fighting Bogus Information about the Art Market – 02/2021," https://files.constantcontact.com/e2d46e59601/45a32416-1d57-49e5-9ac6-0d79ac2b4312.pdf, and Appendix "Analysis of links to terrorism financing (FT) and Money Laundering (ML) to Cultural Goods," https://drive.google.com/file/d/1xMVbjevtq1H1EjZcQCMjTrkDw1YyN54M/view

Provision 16 – Duty of care of art market professionals

Provision 16 should be deleted. It is not necessary and oversteps the mandate of UNESCO whose role is to protect cultural heritage and help eradicate illicit trade, not regulate established art traders. Selling illicit goods is already a crime in all jurisdictions.

There are millions of goods circulating in the market which for legitimate reasons lack documentation of former ownership and or provenance. There must be reasonable and rational burdens of due diligence, as otherwise millions of licit sales would be forbidden.

It is unrealistic to assume that art market professionals can make absolute guarantees. At most, they can warrant only what they know: that to the best of their knowledge items are not stolen, the direct products of illicit excavations, or were illicitly exported directly before receipt.

Provision 17 – Criminal Offence

Provision 17 should be deleted as it does not take into account criminal intent or lack of it or the severity of any infringement. All instances of theft, illicit export and illicit import of cultural property should be evaluated and decided on a case-by-case basis.

The §2 of the provision should be deleted as it oversteps the mandate of UNESCO whose role is to protect cultural heritage and help eradicate illicit trade, not regulate established art traders.

What are identified as criminal offenses must comport with the systems of law in member countries and the principles of due process.

Provision 18 – Administrative sanctions

Provision 18 should be deleted as it oversteps the mandate of UNESCO, whose role is to protect cultural heritage and help eradicate illicit trade, not regulate established art traders.

* * * * *